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No. 99-1848

In the Supreme Court of the United States

BUCKHANNON BOARD AND CARE HOME, INC., ET AL., PETITIONERS

v.

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether a plaintiff may recover attorney's fees under federal statutes making attorney's fees available to a prevailing party, when, as a result of the plaintiff's suit, the defendant voluntarily provides the plaintiff with requested relief.

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INTEREST OF THE UNITED STATES

Congress has authorized both the United States and private parties to enforce various anti-discrimination laws, including the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 *et seq.* (FHAA), and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* (ADA). As an incentive to private enforcement efforts, Congress has authorized the award of attorney's fees to private plaintiffs who prevail under those and other civil rights laws. See 42 U.S.C. 3613(c)(2), 3614(d)(2) (FHAA); 42 U.S.C. 12117(a), 12188 (ADA); see also, *e.g.*, Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b) (1994 & Supp. IV

1998); Voting Rights Act of 1965, 42 U.S.C. 1973*l*(e); Title II of the Civil Rights Act of 1964, 42 U.S.C. 2000a–3(b); Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(k). Because meritorious private enforcement actions provide an important complement to government civil rights enforcement efforts, see, *e.g.*, H.R. Rep. No. 1558, 94th Cong., 2d Sess. 1 (1976), the United States has a significant interest in the construction of the attorney's fees provisions in a manner that fully effectuates that purpose. At the same time, because the United States itself is subject to claims for attorney's fees by private plaintiffs who prevail under other federal statutes, see, *e.g.*, Equal Access to Justice Act, 28 U.S.C. 2412 (1994 & Supp. IV 1998), the United States has an interest in ensuring that statutes providing for attorney's fees are not construed more broadly than Congress intended and that fees are awarded only where Congress has deliberately departed from the traditional "American" rule that each party bears its own litigation expenses. See *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240 (1975). Although this case directly concerns the availability of attorney's fees only under the FHAA and the ADA, it will likely provide guidance on the availability of fees under a wide variety of federal fee-shifting statutes. See *Hensley* v. *Eckerhart*, 461 U.S. 424, 433 n.7 (1983).

STATEMENT

Petitioners are the operators of residential board and care homes (RBCHs) in West Virginia. Pet. App. A7. RBCHs provide a group home environment—and an alternative to institutionalization—for persons who need assisted living but do not need specialized care, such as nursing services. *Ibid.* In 1996, state officials ordered petitioner Buckhannon Board and Care Home to close its RBCHs because those officials determined that some residents, such as 102-year-old Dorsey Pierce, could not satisfy the state fire safety

code's "self-preservation" requirement for RBCH residents. *Ibid.* That provision required that, in the event of a fire, all residents of a RBCH must be able to evacuate the building without prompting or assistance. *Ibid.* See W. Va. Code §§ 16-5C-1 *et seq.* (1996); W. Va. St. R. tit. 64, §§ 65-1 *et seq.* (1996); *id.* tit. 87, § 1-14.7 (1996).

Petitioners filed this action, which challenged both the self-preservation requirement and the specific order to remove residents from the RBCHs. They contended that the "self-preservation" provision was not required for fire safety in a group home that afforded other means of safe evacuation and that the rule conflicted with provisions of the FHAA and the ADA that prohibit discrimination against persons with disabilities. See 42 U.S.C. 3604(f) (FHAA); 42 U.S.C. 12132 (ADA). Pet. App. A7. On March 14, 1998, while the litigation was pending, the West Virginia legislature repealed the self-preservation requirement. *Id.* at A7, A11. On respondents' motion, the district court dismissed the case as moot. *Id.* at A7, A11, A16-A17.

Petitioners moved for attorney's fees under the fee provisions of the FHAA and the ADA. Pet. App. A7. The FHAA provides, in relevant part:

> In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee.

42 U.S.C. 3613(c)(2). Similarly, the ADA provides in relevant part:

> In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee.

42 U.S.C. 12205. Petitioners argued that, even though their case was dismissed, they nonetheless were prevailing parties, within the meaning of those statutes, because their lawsuit prompted the change in policy that mooted the case. Pet. App. A7-A8.

The district court denied the motion. Pet. App. A17-A19. The court stated that petitioners "might prevail on this theory" if it were available. *Id.* at A17. The court concluded, however, that the court of appeals' decision in *S-1 and S-2* v. *State Board of Education*, 21 F.3d 49, 51 (4th Cir.) (en banc), cert. denied, 513 U.S. 876 (1994), prohibited the award of attorney's fees under the circumstances presented here because the plaintiffs did not qualify as "prevailing parties" within the meaning of federal fee shifting statutes, which are construed in pari materia. See Pet. App. A17-A18.[1] The en banc court of appeals had ruled in *S-1 and S-2* that:

> 1. A person may not be a "prevailing party" plaintiff under 42 U.S.C. § 1988 except by virtue of having obtained an enforceable judgment, consent decree, or settlement giving some of the legal relief sought in a § 1983 action. *Farrar v. Hobby*, [506] U.S. [103] (1992).

[1] The *S-1 and S-2* litigation had involved a private suit under 42 U.S.C. 1983 (1994 & Supp. IV 1998), against state and city officials, seeking tuition reimbursement for handicapped students. The private plaintiffs obtained summary judgment and, while the case was on appeal, they reached a settlement with the city officials. The court of appeals concluded that the settlement mooted the case against the state officials, and the state legislature later enacted changes benefitting the private plaintiffs. The private plaintiffs then sought attorney's fees from the state defendants under 42 U.S.C. 1988(b) (1994 & Supp. IV 1998), which allows a "prevailing party" to recover its fees. The district court granted the fee request, and a court of appeals panel affirmed, relying on its prior decision in *Bonnes* v. *Long*, 599 F.2d 1316 (4th Cir. 1979). The en banc court of appeals reversed the fee award and overruled *Bonnes*, citing *Farrar* v. *Hobby*, 506 U.S. 103 (1992). See *S-1 and S-2*, 21 F.3d at 50-51.

> 2. The fact that a lawsuit may operate as a catalyst for post-litigation changes in a defendant's conduct cannot suffice to establish plaintiff as a prevailing party. "Catalyst theory," allowing that result, is no longer available for that purpose, *see Farrar*, [506] U.S. at [113], and cases such as *Bonnes v. Long*, 599 F.2d 1316 (4th Cir. 1979), which applied that theory, are overruled.
>
> 3. Here, the dismissal on appeal of an action under 42 U.S.C. § 1983 for prudential reasons as moot operates to vacate the judgment below, *see United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), and prevents the plaintiffs from being found prevailing parties by virtue of post-dismissal events. The plaintiffs therefore are not entitled to an award of attorney fees under 42 U.S.C. § 1988.

21 F.3d at 51 (parallel citations omitted). The district court concluded that the *S-1 and S-2* decision controlled the outcome of this case. Pet. App. A17-A18.

Petitioners appealed, and the court of appeals affirmed the district court's decision. Pet. App. A4-A8. The three-judge panel concluded that it was bound by the *S-1 and S-2* decision, *id.* at A7, and that, "[b]ecause the plaintiffs did not bring about the change in West Virginia law through any judgment, decree, or settlement, * * * the district court properly applied *S-1 and S-2* to this case," *id.* at A8. The court of appeals denied petitioners' request for rehearing en banc. *Id.* at A1-A3.

SUMMARY OF ARGUMENT

The court of appeals has erroneously concluded that a plaintiff cannot qualify as a "prevailing party," for purposes of awarding attorney's fees under federal civil rights legislation, unless the plaintiff obtains redress through a judicial judgment, consent decree, or out-of-court settlement.

Contrary to the views of every other court of appeals, that court has specifically rejected the possibility that a plaintiff may be entitled to an award of attorney's fees when the plaintiff obtains the relief it seeks through the defendant's voluntary, post-complaint compliance. The court of appeals reached that mistaken conclusion through a misunderstanding of this Court's decision in *Farrar* v. *Hobby*, 506 U.S. 103 (1992).

Prior to *Farrar*, this Court had expressed the understanding that a plaintiff "prevails," and is accordingly eligible for an award of attorney's fees, if the plaintiff succeeds through an enforceable judgment, a consent decree, an out-of-court settlement, or the defendant's voluntary, post-complaint change in conduct that redresses the plaintiff's grievances. See *Hewitt* v. *Helms*, 482 U.S. 755, 760-761 (1987). The courts of appeals, including the Fourth Circuit, had uniformly expressed that understanding as well. Indeed, the Court described that principle as "settled law." *Ibid.*; see also *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Found., Inc.*, 484 U.S. 49, 67 n.6 (1987).

The Court's decision in *Farrar* did not manifest any intention to change that principle. Indeed, *Farrar* did not address, explicitly or implicitly, the question whether a plaintiff may qualify as a "prevailing party" if the plaintiff obtains the relief it seeks through the defendant's post-complaint compliance. *Farrar* held that a plaintiff that litigates to judgment, but receives only nominal damages, qualifies as a "prevailing party" because the plaintiff receives actual relief that materially alters the relationship between the parties in a way that benefits the plaintiff. 506 U.S. at 111-112. If anything, *Farrar*'s rationale supports, rather than repudiates, the Court's prior endorsement of the principle at issue here. Like a plaintiff that receives nominal damages, a plaintiff that achieves the aim of its suit through the defendant's voluntary compliance receives actual relief

that resolves the legal dispute in a way that benefits the plaintiff.

The court of appeals' contrary ruling is inconsistent with the accepted meaning of a "prevailing party," is contrary to the unambiguous legislative history of relevant federal legislation, and would produce results that are irrational and contrary to the purposes of federal fee-shifting statutes. A plaintiff whose lawsuit induces voluntary compliance has no less need for or entitlement to an attorney's fee award than a plaintiff who achieves the same objective by litigating to judgment or reaching a settlement. Denying a fee award when the plaintiff obtains voluntary compliance would produce powerful disincentives for victims of discrimination to bring meritorious suits and would encourage attorneys to engage in gamesmanship that is far removed from the merits of the underlying dispute.

This Court should accordingly reject the court of appeals' categorical rule, reverse the judgment, and remand the case for a determination of whether petitioners qualify as "prevailing parties" under the specific facts of this case. The district court's determination should be guided by three central considerations: (1) whether petitioners' complaint had legal merit; (2) whether petitioners received actual relief that redressed their grievances; and (3) whether petitioners' lawsuit played a substantial role in inducing respondents to change their ways.

ARGUMENT

A PLAINTIFF MAY RECOVER ATTORNEY'S FEES UNDER THE PREVAILING PARTY STANDARD IF, AS A RESULT OF THE PLAINTIFF'S SUIT, THE DEFENDANT VOLUNTARILY PROVIDES THE PLAINTIFF WITH REQUESTED RELIEF

The Fourth Circuit, alone among the courts of appeals, has ruled that a person does not qualify as a "prevailing party," for purposes of federal attorney's fee statutes, "except by virtue of having obtained an enforceable judgment, consent decree, or settlement giving some of the legal relief sought." *S-1 and S-2* v. *State Bd. of Educ.*, 21 F.3d 49, 51 (4th Cir. 1994) (en banc). That court erroneously concluded that this Court's decision in *Farrar* v. *Hobby*, 506 U.S. 103 (1992), required that result. This Court's pre-*Farrar* decisions had accepted the proposition that a plaintiff may receive an award of attorney's fees if, as a result of the plaintiff's suit, the defendant voluntarily provided the requested relief. The Court's decision in *Farrar* did not call that practice into question. To the contrary, the practice is consistent with the language, legislative history, and purposes of fee-shifting statutes. This Court should accordingly reverse the judgment of the court of appeals and remand the case for determination of whether, under the facts of this case, an award of fees is warranted.[2]

[2] Courts and litigants frequently describe a court's award of attorney's fees in the absence of a formal judgment as resting on the "catalyst theory." See, *e.g.*, Pet. App. A7, A17. Because that shorthand phrase embraces several different approaches to the question presented here, see, *e.g.*, *Long* v. *Bonnes*, cert. denied, 455 U.S. 961 (1982) (Rehnquist, J., dissenting from denial of certiorari), we do not employ that terminology.

A. This Court's Decisions Prior To *Farrar* v. *Hobby* Manifested The Understanding That A Plaintiff May Recover Fees If The Defendant Has Voluntarily Provided Requested Relief

Under traditional practice in American courts, a party that seeks relief through the judicial process must pay its own attorney's fees. See *Alyeska Pipeline Serv. Co.* v. *Wilderness Society*, 421 U.S. 240 (1975). Congress, however, has modified that rule by statute in a number of important contexts. See, *e.g.*, Equal Access to Justice Act, 28 U.S.C. 2412(b) and (d); Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988(b) (1994 & Supp. IV 1998). For example, many federal anti-discrimination laws, including the FHAA and the ADA, provide that a "prevailing party," other than the United States, may recover a "reasonable attorney's fee." See 42 U.S.C. 3613(c)(2) (FHAA); 42 U.S.C. 12205 (ADA). Congress has enacted those fee-shifting provisions "to ensure 'effective access to the judicial process' for persons with civil rights grievances." *Hensley* v. *Eckerhart*, 461 U.S. 424, 429 (1983) (quoting H.R. Rep. No. 1558, 94th Cong., 2d Sess. 1 (1976) (supporting passage of 42 U.S.C. 1988)).[3]

This Court stated in *Hensley*—and explicitly reiterated in *Texas Teachers Ass'n* v. *Garland School District*, 489 U.S. 782, 791-792 (1989)—that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of

[3] In accordance with Congress's intent, this Court has given the term "prevailing party" a consistent interpretation for all of the attorney's fees statutes in which that term appears. See *Hensley*, 461 U.S. at 433 n.7; H.R. Rep. No. 485, 101st Cong., 2d Sess. Pt. 2, at 140 (ADA) ("It is intended that the term 'prevailing party' be interpreted consistently with other civil rights laws."); H.R. Rep. No. 711, 100th Cong., 2d Sess. 16 & n.20 (1988) (fee provision of FHAA modeled on 42 U.S.C. 1988).

the benefit the parties sought in bringing suit." *Hensley*, 461 U.S. at 433 (quoting *Nadeau* v. *Helgemoe*, 581 F.2d 275, 278-279 ((1st Cir. 1978)). The Court has since recognized, based in part on the legislative reports that accompanied 42 U.S.C. 1988, that a plaintiff may qualify as a prevailing party even though the plaintiff has not litigated the issue to judgment. See S. Rep. No. 1011, 94th Cong., 2d Sess. 5 (1976) ("parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief"); H.R. Rep. No. 1558, *supra*, at 6-7 (accord). The Court's decisions indicate, in accordance with those reports, that a plaintiff may "succeed on [a] significant issue in litigation" through: (1) a consent decree; (2) an out-of-court settlement agreement; or (3) the defendant's voluntary cessation of the challenged practice. See *id.* at 7.[4]

The Court's decision in *Hanrahan* v. *Hampton*, 446 U.S. 754 (1980), noted that a plaintiff may qualify as a "prevailing party" on the basis of a consent judgment. The Court stated:

> The legislative history of the Civil Rights Attorney's Fees Awards Act of 1976 indicates that a person may in some circumstances be a "prevailing party" without having obtained a favorable "final judgment following a full trial on the merits." H.R. Rep. No. 94-1558, p. 7 (1976). See also S. Rep. No. 94-1011, p. 5 (1976). Thus, for example, "parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief," *ibid.* See also H.R. Rep. No. 94-1558, *supra*, at 7, and cases cited; *Dawson* v. *Pastrick*, 600 F.2d 70, 78 (CA7 1979); *Nadeau* v. *Helgemoe*, 581 F.2d 275, 279-281 (CA1 1978).

Id. at 756-757. The Court's decision in *Maher* v. *Gagne*, 448 U.S. 122 (1980), reached a similar conclusion with respect to settlements. The Court stated:

> The fact that respondent prevailed through a settlement rather than through litigation does not weaken her claim to fees. Nothing in the language of § 1988 conditions the District Court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiff's rights have been violated. Moreover, the Senate Report expressly stated that "for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief."

Id. at 129 (quoting S. Rep. No. 1011, *supra*, at 5).

The Court's decision in *Hewitt* v. *Helms*, 482 U.S. 755 (1987), addressed, albeit indirectly, the consequences of a defendant's voluntary cessation of a challenged practice. The central issue in *Hewitt* was "the peculiar-sounding question whether a party who litigates to judgment and loses on all of his claims can nonetheless be a 'prevailing party' for purposes of an award of attorney's fees." *Id.* at 757. Helms had alleged that prison officials mistreated him, and a lower court rendered a favorable interlocutory ruling, but ultimately denied him any form of judicial relief. *Id.* at 760. This Court concluded that Helms was not entitled to an award of attorney's fees. *Id.* at 760-763. The Court explained:

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[4] The House Report specifically states that "[t]he phrase 'prevailing party' is not intended to be limited to the victor only after entry of a final judgment following a full trial on the merits." H.R. Rep. No. 1558, *supra*, at 7. "If the litigation terminates by *consent decree*, for example, it would be proper to award counsel fees." *Ibid.* (emphasis added). "A 'prevailing' party should not be penalized for seeking an *out-of-court settlement*, thus helping to lessen docket congestion." *Ibid.* (emphasis added). "Similarly, after a complaint is filed, *a defendant might voluntarily cease the unlawful practice*. A court should still award fees even though it might conclude, as a matter of equity, that no formal relief, such as an injunction, is needed." *Ibid.* (emphasis added).

> It is settled law, of course, that relief need not be judicially decreed in order to justify a fee award under § 1988. A lawsuit sometimes produces voluntary action by the defendant that affords the plaintiff all or some of the relief he sought through a judgment—*e.g.*, a monetary settlement *or a change in conduct that redresses the plaintiff's grievances.* When that occurs, the plaintiff is deemed to have prevailed despite the absence of a formal judgment in his favor. See *Maher*, *supra*, at 129.

Id. at 760-761 (emphasis added).

As the quoted language makes clear, the Court's decision in *Hewitt* explicitly accepted, as "settled law," that a plaintiff "prevails," for purposes of an award of attorney's fees if: (a) the plaintiff's lawsuit seeks specific relief to address particular grievances; and (b) the defendant responds by taking voluntary action—including either a settlement *or* "a change in conduct"—that provides some or all of that relief.[5] The Court contrasted that situation with the one before it and concluded that "a favorable judicial statement of law in the course of litigation that results in judgment against the

[5] The Court had good reason to characterize this principle as "settled law." By 1987, numerous courts of appeals had recognized that a plaintiff may be entitled to an award of attorney's fees if the plaintiff received requested relief through the defendant's voluntary compliance. See *Exeter-West Greenwich Reg'l Sch. Dist.* v. *Pontarelli*, 788 F.2d 47, 53 (1st Cir. 1986); *Gerena-Valentin* v. *Koch*, 739 F.2d 755, 758-759 (2d Cir. 1984); *Institutionalized Juveniles* v. *Secretary of Pub. Welfare*, 758 F.2d 897, 911-912 (3d Cir. 1985); *Bonnes* v. *Long*, 599 F.2d 1316, 1319 (4th Cir. 1979); *Hennigan* v. *Ouachita Parish Sch. Bd.*, 749 F.2d 1148, 1150-1151 (5th Cir. 1985); *Stewart* v. *Hannon*, 675 F.2d 846, 851 (7th Cir. 1982); *Williams* v. *Miller*, 620 F.2d 199, 202 (8th Cir. 1980); *American Constitutional Party* v. *Munro*, 650 F.2d 184, 187-188 (9th Cir. 1981); *J & J Anderson, Inc.* v. *Town of Erie*, 767 F.2d 1469, 1474-1475 (10th Cir. 1985); *Doe* v. *Busbee*, 684 F.2d 1375, 1379 (11th Cir.1982); *Grano* v. *Barry*, 783 F.2d 1104, 1108 (D.C. Cir. 1986).

plaintiff does not suffice to render him a 'prevailing party.'" 482 U.S. at 763. The Court thus made clear that the "prevailing party" requirement focuses on whether, and to what extent, the plaintiff's lawsuit produces the tangible "end" result that the plaintiff sought. Accord *Texas Teachers Ass'n*, 489 U.S. at 792 ("the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant").[6]

The Court's decision in *Hewitt* also rejected Helms' "alternative" argument that he might be entitled to attorney's fees because his lawsuit prompted prison officials to amend prison regulations. The Court concluded that it "need not

[6] The Court specifically made that point in the course of rejecting Helms' argument that the lower court's favorable, but inconsequential, interlocutory ruling was the equivalent of declaratory relief. 482 U.S. at 761. The Court explained, "To suggest such an equivalency is to lose sight of the nature of the judicial process. In all civil litigation, the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment produces—the payment of damages, or some specific performance, or the termination of some conduct. Redress is sought *through* the courts, but *from* the defendant." *Ibid.* The Court specifically observed:

> The real value of the judicial pronouncement * * * is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.* * * * If the defendant, under the pressure of the lawsuit, pays over a money claim before the judicial judgment is pronounced, the plaintiff has "prevailed" in his suit because he has obtained the substance of what he sought. Likewise in a declaratory judgment action: if the defendant, under pressure of the lawsuit, alters his conduct (or threatened conduct) towards the plaintiff that was the basis for the suit, the plaintiff will have prevailed.

Ibid. Accord *Rhodes* v. *Stewart*, 488 U.S. 1, 4 (1988) (per curiam) ("A declaratory judgment, in this respect, is no different from any other judgment. It will constitute relief, for purposes of § 1988, if, and only if, it affects the behavior of the defendant toward the plaintiff.").

decide the circumstances, if any, under which this 'catalyst' theory could justify a fee award under § 1988" because Helms was not in prison at the time the prison officials amended the regulations and therefore could not have received "redress" through those regulations. *Hewitt*, 482 U.S. at 763. The Court also suggested that, even in the absence of that obstacle, Helms would additionally have had to show that his complaint requested the change in the regulations and that there was a "clear causal link between his lawsuit and the State's amendment of its regulations." *Ibid.*[7]

This Court addressed the issue of voluntary cessation again, shortly after the Court decided *Hewitt*, in *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987). That case arose from a private plaintiff's attempt to abate, through the citizen suit provisions of the Clean Water Act, 33 U.S.C. 1365, unlawful water pollution discharges. Those provisions allow citizens to bring private enforcement actions against polluters and authorize the courts to award attorney's fees to successful plaintiffs.[8] In the course of addressing the legal standards for determining

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[7] See also *Rhodes*, 488 U.S. at 4 ("This case is thus controlled by our holding in *Hewitt*, where the fact that the respondent had 'long since been released from prison' and 'could not get redress' from any changes in prison policy caused by his lawsuit compelled the conclusion that he was ineligible for an award of fees.").

[8] At that time, the Clean Water Act authorized attorney's fees "whenever the court determines such award is appropriate." 33 U.S.C. 1365(d) (1982). Nevertheless, this Court interpreted the Clean Water Act to require that the plaintiff achieve at least "some degree of success on the merits." See *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 684-694 (1983). Thus, the Clean Water Act's attorney's fee provisions effectively imposed a "prevailing party" requirement like those contained in the civil rights laws. See *Texas Teachers Ass'n*, 489 U.S. at 791 (Under Section 1988, a plaintiff is a prevailing party if it "succeeded on any significant claim affording it some of the relief sought."). The current version of the Clean Water Act expressly limits fees to a "prevailing" party. 33 U.S.C. 1365(d).

when a citizen suit becomes moot, the Court noted that the Clean Water Act allows a court to award attorney's fees to a citizen plaintiff if, "as a result of a citizen proceeding and before a verdict is issued, a defendant abated a violation." 484 U.S. at 67 n.6. In *Gwaltney*, as in *Hewitt*, the Court envisioned that a plaintiff would be eligible to recover attorney's fees if, as a result of the plaintiff's suit, the defendant elected to forego litigation and to comply voluntarily with the plaintiff's demand for cessation of the unlawful practice. *Ibid.*

Taken collectively, the Court's pre-*Farrar* decisions manifest the Court's understanding that a plaintiff may recover attorney's fees under the "prevailing party" standard if, as a result of the plaintiff's suit, the defendant voluntarily provides the plaintiff with requested relief. To be sure, the Court has never had occasion, until now, to rule squarely on that specific issue in a discrete factual context. Nevertheless, the Court's decisions express the understanding that a plaintiff may be entitled to fees when the defendant takes post-complaint action "that affords the plaintiff all or some of the relief he sought" through "a change in conduct that redresses the plaintiff's grievances." *Hewitt*, 482 U.S. at 760-761. The Court's acceptance of that "settled" principle clearly contributed to the Court's ratio decidendi in *Hewitt*, and it informed the Court's decision in *Gwaltney*. Until this Court's decision in *Farrar* v. *Hobby*, *supra*, the Fourth Circuit, like all of the other courts of appeals, shared that understanding and applied it in specific cases. See, *e.g.*, *S-1 by and through P-1* v. *State Bd. of Educ.*, 6 F.3d 160, 164-165 (4th Cir. 1993), rev'd, 21 F.3d 49 (en banc), cert. denied, 513 U.S. 876 (1994); see also *Spencer* v. *General Elec. Co.*, 894 F.2d 651, 662 (4th Cir. 1990); *DeMier* v. *Gondles*, 676 F.2d 92, 93 (4th Cir. 1982); *Wooldridge* v. *Marlene Indus. Corp.*, 898 F.2d 1169, 1173-1174 (6th Cir. 1990), and cases cited at note 5, *supra*.

B. This Court's Decision In *Farrar* v. *Hobby* Does Not Repudiate The Principle That A Plaintiff May Recover Fees If The Defendant Voluntarily Provides Requested Relief

The Fourth Circuit stands alone among the courts of appeals in holding that this Court's decision in *Farrar* v. *Hobby*, 506 U.S. 103 (1992), precludes a plaintiff from qualifying as a "prevailing party" if the plaintiff's lawsuit induces the defendant to provide the requested relief voluntarily through a unilateral, post-complaint change in the defendant's conduct.[9] The Fourth Circuit's counter-intuitive holding rests on a misunderstanding of *Farrar*, which does not address that question. If anything, *Farrar* supports, rather than repudiates, the widely accepted principle that plaintiff may be a "prevailing party" if the plaintiff succeeds on its claims through means other than "an enforceable judgment, consent decree, or settlement" (*S-1 and S-2*, 21 F.3d at 51).

This Court's decision in *Farrar* addressed "whether a civil rights plaintiff who receives a nominal damages award is a 'prevailing party' eligible to receive attorney's fees under 42 U.S.C. § 1988." 506 U.S. at 105. Farrar had brought a civil rights suit against Hobby and other Texas officials under 42

[9] See, *e.g.*, *New Hampshire* v. *Adams*, 159 F.3d 680, 685 (1st Cir. 1998); *Marbley* v. *Bane*, 57 F.3d 224, 234 (2d Cir. 1995); *Baumgartner* v. *Harrisburg Housing Auth.*, 21 F.3d 541, 546-550 (3d Cir. 1994); *Craig* v. *Gregg County*, 988 F.2d 18, 21 (5th Cir. 1993); *Payne* v. *Board of Educ.*, 88 F.3d 392, 397 (6th Cir. 1996); *Zinn* v. *Shalala*, 35 F.3d 273, 274-275 (7th Cir. 1994); *Little Rock Sch. Dist.* v. *Pulaski County Special Sch. Dist. 1*, 17 F.3d 260, 262-263 & n.3 (8th Cir. 1994); *Kilgour* v. *City of Pasadena*, 53 F.3d 1007, 1010 (9th Cir. 1995); *Beard* v. *Teska*, 31 F.3d 942, 951-952 (10th Cir. 1994); *Morris* v. *City of West Palm Beach*, 194 F.3d 1203, 1207 (11th Cir. 1999); but see *Foreman* v. *Dallas County*, 193 F.3d 314, 320 (5th Cir. 1999) (stating, in dicta, that, after *Farrar*, "the continuing validity of the catalyst theory is in serious doubt"), cert. denied, 120 S. Ct. 1673 (2000).

U.S.C. 1983, seeking $17 million in compensation for an alleged violation of constitutional rights. 506 U.S. at 105-106. A jury found that Hobby had violated Farrar's rights, and the district court ultimately entered a judgment for nominal damages. *Id.* at 106-107. The district court awarded Farrar substantial attorney's fees, but the court of appeals reversed that award on the basis that Farrar was not a "prevailing party." *Id.* at 107-109. This Court determined that Farrar was a "prevailing party" for purposes of 42 U.S.C. 1988, but it affirmed the judgment on the ground that an award of any fees in that case was unreasonable. See 506 U.S. at 109-116.

In reaching its decision, the Court repeated its general formulation that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Farrar*, 506 U.S. at 109 (quoting *Hensley*, 461 U.S. at 433). The Court then reviewed its decisions in "three recent cases"—*Hewitt*, *Rhodes*, and *Texas Teachers Ass'n*—in which the Court had "elaborated on the definition of prevailing party." *Ibid.* As the Court noted, in each of those cases—as in the case before it—the plaintiff had litigated its claim to "judgment." *Id.* at 109 (*Hewitt*), 110 (*Rhodes*), 111 (*Texas Teachers Ass'n*). The Court distilled the following principles from those fully litigated cases:

> [T]o qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgment against the defendant from whom fees are sought, *Hewitt*, *supra*, at 760, or comparable relief through a consent decree or settlement. *Maher* v. *Gagne*, 448 U.S. 122, 129 (1980). Whatever relief the plaintiff secures must directly benefit him at the time of the judgment or settlement. See *Hewitt*, *supra*, at 764. Otherwise the

> judgment or settlement cannot be said to "affec[t] the behavior of the defendant toward the plaintiff." *Rhodes*, *supra*, at 4. Only under these circumstances can civil rights litigation effect "the material alteration of the legal relationship of the parties" and thereby transform the plaintiff into a prevailing party. [*Texas Teachers Ass'n*], *supra*, at 792-793. In short, a plaintiff "prevails" when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.

Id. at 111-112. Applying that test, the Court concluded that a plaintiff who wins nominal damages is a prevailing party because "[a] judgment for damages in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay." *Id.* at 113.

The Fourth Circuit reasoned that, because the passages of *Farrar* quoted above do not indicate that a plaintiff may prevail through the defendant's voluntary cessation of the challenged conduct, the Court intended to foreclose that basis for an attorney's fee award. See *S-1 and S-2*, 21 F.3d at 51; *S-1 by and through P-1*, 6 F.3d at 168-169 (Wilkinson, J., dissenting) (opinion adopted by the en banc court). That reasoning is flawed at the threshold. The Court did not discuss the question of voluntary cessation because that issue was not before it. See *Friends of the Earth, Inc.* v. *Laidlaw Envtl. Servs. (TOC), Inc.*, 120 S. Ct. 693, 711 (2000) (noting that question whether a plaintiff may obtain fees based on the defendant's voluntary cessation of the challenged action "was not presented for this Court's decision in *Farrar*" and that "several Courts of Appeals have expressly concluded that *Farrar* did not repudiate [that] theory"). The Court's decision in *Farrar* accordingly cannot be viewed as having

decided that matter. See, *e.g.*, *Brecht* v. *Abrahamson*, 507 U.S. 619, 631 (1993); *United States* v. *L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952); *Webster* v. *Fall*, 266 U.S. 507, 511 (1925).

Furthermore, the court of appeals had no basis for inferring from *Farrar* that a plaintiff can never obtain attorney's fees if the lawsuit induces voluntary compliance. *Farrar* resolved an attorney's fee dispute involving a *judgment*, and it did not repudiate, expressly or by implication, the Court's past observations that a plaintiff may "prevail," for purposes of an award of attorney's fees, if the plaintiff's lawsuit produces "a change in conduct that redresses the plaintiff's grievances." *Hewitt*, 482 U.S. at 760-761; see also *Gwaltney*, 484 U.S. at 67 n.6. The passages in *Farrar* that the court of appeals cited provide clear guidance for cases involving a judgment, which was the only factual context before the Court. Those passages, however, should not be mechanically applied to other contexts or employed without regard to this Court's statements respecting the availability of attorney's fees when a plaintiff obtains redress "despite the absence of a formal judgment in his favor." *Hewitt*, 482 U.S. at 761. See pp. 10-15, *supra*

Moreover, even if the Court decided to extend *Farrar*'s verbal formulation beyond the context of judgments, see 506 U.S. at 111-112, that formulation would support the conclusion that a plaintiff whose lawsuit induces voluntary post-complaint compliance is a "prevailing party." First, a plaintiff who obtains the objective of his suit through the defendant's voluntary post-complaint compliance receives "actual relief on the merits of his claim." *Farrar*, 506 U.S. at 111. Indeed, that plaintiff obtains far more meaningful redress—despite the absence of a formal judgment—than a party who receives nominal damages, like the plaintiff in *Farrar*. See *Hewitt*, 482 U.S. at 761. Second, that relief "materially alters the legal relationship between the par-

ties." *Farrar*, 506 U.S. at 111. The defendant who voluntarily complies with the plaintiff's demand for relief eliminates the basis for the plaintiff's legal challenge, moots the plaintiff's legal action, and relieves the parties of their obligation to litigate the suit. Plainly, the plaintiff is "able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." *Texas Teachers Ass'n*, 489 U.S. at 792. Third, that change in the legal relationship "modif[ies] the defendant's behavior in a way that directly benefits the plaintiff." *Farrar*, 506 U.S. at 111-112. The plaintiff receives the actual relief it has requested. Furthermore, if the court determines that the defendant's actions have mooted the case, the plaintiff has received a benefit that is concrete and effectively permanent. See *Friends of the Earth*, 120 S. Ct. at 708 (a defendant is entitled to dismissal only if it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur") (quoting *United States* v. *Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968)); Pet. App. A13-A17.

In sum, *Farrar* supports, rather than undermines, the principle that a plaintiff may recover fees if the defendant voluntarily provides the requested relief. As we next show, the principle finds solid support in the language, legislative history, and purpose of the relevant federal legislation. The court of appeals' ruling does not.

C. The Court Of Appeals' Ruling Is Inconsistent With The Language, Legislative History, And Purposes Of Federal Legislation Authorizing Awards Of Attorney's Fees To Prevailing Parties

A plaintiff that has obtained the redress that it seeks through the defendant's voluntary compliance with the plaintiff's demand for relief is a "prevailing party" within the plain meaning of the FHAA, the ADA, and other attorney's fee statutes. The ordinary meaning of the verb "to prevail" is "to be or become effective or effectual; be successful." See, *e.g.*, *Webster's Third New International Dictionary* (1976) (def. 3). The Court has accordingly stated that a plaintiff has "prevailed" if he has "succeed[ed] on any significant issue in litigation which achieves some of the benefit [he] sought in bringing suit." *Farrar*, 506 U.S. at 109 (interpreting the term "prevailing party" in 42 U.S.C. 1988); *Texas Teachers Ass'n*, 489 U.S. at 791-792 (same); *Hensley*, 461 U.S. at 433 (same). A plaintiff whose lawsuit induces voluntary, post-complaint compliance plainly qualifies as a prevailing party under that standard because "because he has obtained the substance of what he sought." *Hewitt*, 482 U.S. at 761. See *ibid.* ("if the defendant, under pressure of the lawsuit, alters his conduct (or threatened conduct) towards the plaintiff that was the basis for the suit, the plaintiff will have prevailed").[10]

That construction is consistent with the legislative history of the FHAA and ADA attorney's fee provisions. The legislative reports that accompanied the FHAA and the ADA state that the term "prevailing party" has the same meaning in those statutes as in other civil rights laws, including 42

[10] The court of appeals' contrary ruling depends on a limitation—the requirement that the party obtain relief through "an enforceable judgment, consent decree, or settlement" (*S-1 and S-2*, 21 F.3d at 51)—that appears nowhere in the statutes at issue. See 42 U.S.C. 3613(c); 42 U.S.C. 12205. Furthermore, that limitation creates a stark anomaly: A plaintiff *may* "prevail" through an out-of-court settlement, where the plaintiff and the defendant agree to a compromise of the plaintiff's claims; but the plaintiff *cannot* "prevail" through the defendant's voluntary post-complaint compliance, where the defendant unilaterally capitulates to the plaintiff's request for relief. See *S-1 and S-2*, 21 F.3d at 51; cf. *Hewitt*, 482 U.S. at 760-761 (a plaintiff may prevail through "a monetary settlement *or* a change in conduct that redresses the plaintiff's grievances") (emphasis added).

U.S.C. 1988 (1994 & Supp. IV 1998). See note 3, *supra*. The House report accompanying 42 U.S.C. 1988 unambiguously states:

> A 'prevailing' party should not be penalized for seeking an out-of-court settlement, thus helping to lessen docket congestion. Similarly, after a complaint is filed, a defendant might voluntarily cease the unlawful practice. A court should still award fees even though it might conclude, as a matter of equity, that no formal relief, such as an injunction, is needed.

H.R. Rep. No. 1558, *supra*, at 7. The House and Senate reports cite numerous examples of such cases. See *ibid.*; S. Rep. No. 1011, *supra*, at 5.[11]

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[11] The cited cases include the frequently followed decision, *Parham* v. *Southwestern Bell Tel. Co.*, 433 F.2d 421, 429-430 (8th Cir. 1970) (awarding fees despite the lack of need for equitable relief), as well as others. See *Kopet* v. *Esquire Realty Co.*, 523 F.2d 1005, 1007-1008 (2d Cir. 1975) (awarding fees under "common fund" doctrine and noting that fees may be awarded "even where adjudication on the merits is never reached, *e.g.*, after a settlement"); *Brown* v. *Gaston County Dyeing Mach. Co.*, 457 F.2d 1377, 1383 (4th Cir.) (awarding fees despite the lack of need for equitable relief), cert. denied, 409 U.S. 982 (1972); *Thomas* v. *Honeybrook Mines, Inc.*, 428 F.2d 981, 986 (3d Cir. 1970) (awarding fees under "common fund" doctrine where plaintiff's lawsuit caused defendants to take the action requested in the lawsuit), cert. denied, 401 U.S. 911 (1971); *Richards* v. *Griffith Rubber Mills*, 300 F. Supp. 338 (D. Or. 1969) (awarding fees even though injunctive relief was made inappropriate by, among other things, the fact that the defendant had provided the plaintiff the job assignment she requested). The cases cited in the legislative reports are merely illustrative of decisions from that era. See also, *e.g.*, *Peltier* v. *City of Fargo*, 533 F.2d 374, 380 (8th Cir. 1976) (denial of equitable relief); *Rice* v. *Gates Rubber Co.*, 521 F.2d 782, 785 (6th Cir. 1975) (same); *Barnett* v. *W.T. Grant Co.*, 518 F.2d 543, 550 (4th Cir. 1975) (same); *Evans* v. *Sheraton Park Hotel*, 503 F.2d 177, 189 (D.C. Cir. 1974) (same); see also *Ramey* v. *Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974) (derivative suit mooted by defendant's voluntary compliance with plaintiff's demands), cert. denied, 422 U.S. 1048 (1975); *Kahan* v. *Rosenstiel*, 424 F.2d 161, (3d Cir.) (same), cert. denied, 398 U.S. 950 (1970).

That interpretation is also consistent with the central purpose of federal fee-shifting statutes. Congress sought to ensure that persons who have legitimate civil rights grievances have effective access to the judicial process, *Hensley*, 461 U.S. at 429, and can participate in the vindication of important civil rights principles, *Newman* v. *Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968). See *Kay* v. *Ehrler*, 499 U.S. 432, 436 n.2 (1991) ("If private citizens are to be able to assert their civil rights, . . . then citizens must have the opportunity to recover what it costs them to vindicate these rights in court." (quoting S. Rep. No. 1011, *supra*, at 2)). Congress had no reason to deny the benefits of those statutes to the plaintiff that brings a meritorious suit and induces compliance without formal judgment.

A plaintiff whose lawsuit induces voluntary and unilateral compliance with the civil rights laws has no less need or entitlement to recover attorney's fees than the plaintiff who achieves that objective by litigating to judgment or by reaching an out-of-court settlement. With respect to need, a plaintiff will likely require costly professional services to bring a meritorious lawsuit, regardless of whether that suit is ultimately resolved by judgment, settlement, or voluntary compliance. And with respect to entitlement, Congress surely sought to encourage plaintiffs to bring suit in the *most* meritorious cases, where the defendant stands in clear violation of the law. Those are precisely the cases in which a plaintiff's suit is likely to induce voluntary compliance. Indeed, the court of appeals' rule would have the perverse effect of selectively denying plaintiffs fees in precisely those

situations in which a lawsuit promptly and effectively induces compliance with the law.[12]

Furthermore, the court of appeals' categorical rule that a plaintiff cannot obtain attorney's fees if the plaintiff's suit is mooted by the defendant's voluntary compliance would affirmatively discourage plaintiffs from bringing meritorious claims for fear that the defendant could take unilateral action, at any time before judgment, that would extinguish the plaintiff's right to receive otherwise recoverable litigation expenses. A plaintiff considering a suit for equitable relief may be understandably deterred from vindicating its rights by the prospect that the defendant can freely terminate the action through voluntary compliance and leave the plaintiff to bear all the costs of the litigation, even if the plaintiff clearly would have prevailed had the case proceeded to judgment. That deterrent effect is greatest for cases that are expensive to litigate and lack any prospect of a large damage award for financing the litigation, such as many meritorious civil rights cases. See *City of Riverside* v. *Rivera*, 477 U.S. 561, 577 (1986) (plurality opinion) ("Congress enacted § 1988 specifically to enable plaintiffs to enforce the civil rights laws even where the amount of

[12] The court of appeals' contrary rule is also anomalous in light of the legal profession's role in the resolution of disputes. Parties in litigation are normally interested in achieving some tangible result, see *Hewitt*, 482 U.S. at 760-761, but they must rely on their attorneys' advice in determining the best means to the desired end. See generally ABA Model Rules of Professional Conduct, *reprinted in ABA/BNA Lawyers' Manual on Professional Conduct* (2000). Congress surely did not intend to deny a plaintiff a fee award in those situations in which the attorney has accomplished what the plaintiff, the judiciary, and the public should view as the most efficacious result—the resolution of a meritorious lawsuit, and the achievement of the plaintiff's desired outcome, through the defendant's voluntary action.

damages at stake would not otherwise make it feasible for them to do so.").[13]

The court of appeals' rule may also encourage some defendants to disregard the law unless and until they are sued, particularly where private enforcement under the law is limited to suits for injunctive relief. For example, under the court of appeals' approach, a business that is obligated under the ADA to make its facility accessible to those with disabilities may well conclude that it is cost-effective to disregard the law until sued and then make the required accommodations to moot the case. Indeed, that business may be justified in concluding that a lawsuit will never materialize in light of the low probability that disabled citizens injured by that violation of the ADA would undertake the risk of financing an easily mooted lawsuit. See *Riverside*, 477 U.S. at 577-578 ("Fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain.") (quoting S. Rep. No. 1011, *supra*, at 2).

Finally, the court of appeals' rule could encourage the litigants to engage in strategic behavior directed at the avail-

[13] A number of important civil rights statutes allow only injunctive relief. See, *e.g.*, 42 U.S.C. 12188(a) (public accommodations provisions of the ADA); 42 U.S.C. 2000a-3 (Title II of the Civil Rights Act of 1964); see also H.R. Rep. No. 1558, *supra*, at 9 ("[I]n a large number of cases brought under the provisions covered by [Section 1988], only injunctive relief is sought."). Additionally, even where damages are available, "it should be observed that, in some cases, immunity doctrines and special defenses, available only to public officials, preclude or severely limit the damage remedy." See *ibid.* For example, a plaintiff may bring an age discrimination action against a public official under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), but the plaintiff is entitled to only equitable relief. See *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62 (2000); *Alden* v. *Maine*, 527 U.S. 706, 755-757 (1999).

ability of attorney's fees rather than the merits of the case. The court's rule could encourage plaintiffs to include claims for damages, even when they would otherwise be satisfied with injunctive relief, to make the case more difficult to moot. See, *e.g.*, *University of Tex.* v. *Camenisch*, 451 U.S. 390, 393-394 (1981) (claim for damages prevented mootness). Similarly, the rule could encourage plaintiffs to expand the number of litigants or bring class-action claims to make the claim more difficult to moot. See, *e.g.*, *Sosna* v. *Iowa*, 419 U.S. 393, 399-402 (1975) (class action claims prevented mootness). At the same time, the court of appeals' rule could give defendants a strong incentive to coerce the plaintiff, through protracted litigation, to settle a meritorious claim on unfavorable terms, with provision for attorney's fees, rather than run the risk that the defendant will comply without settlement and moot the case. Congress plainly did not intend to draw distinctions between settlement and voluntary compliance that would skew the litigants' incentives in this way and produce unwarranted results.

D. This Court Should Remand The Case For A Determination Of Whether, Under The Facts Of This Case, An Award Of Fees Is Appropriate

The Court should reverse the court of appeals' ruling that a plaintiff can qualify as a "prevailing party" only through a "judgment, decree, or settlement" (Pet. App. A8). There is no occasion, however, for the Court to resolve the question whether an award of attorney's fees is warranted under the fact of this case. Neither the court of appeals nor the district court reached that question. See *id.* at A7-A8, A17-A18. Furthermore, petitioners acknowledge that the Court should remand the case so that the district court can "make appropriate findings of fact and conclusions of law" on petitioners' motion for attorney's fees. Pet. 27. In making those determinations, the district court should be guided by

several principles that can readily be discerned from the decisions of this Court and the courts of appeals.

First, a plaintiff that claims that its lawsuit induced voluntary compliance is entitled to an award of attorney's fees only if that suit had legal merit. "It is clear beyond peradventure that unless an action brought by a private litigant contains some basis in law for the benefits ultimately received by that litigant, the litigant cannot be said to have 'enforced' the civil rights laws or to have promoted their policies for the benefit of the public at large." *Long* v. *Bonnes*, cert. denied, 455 U.S. 961, 966-967 (1982) (Rehnquist, J., dissenting from denial of certiorari).[14] The district court need not determine that the plaintiff would have prevailed had the plaintiff litigated the suit to judgment. See *id.* at 966 n.3.[15] Rather, the court should determine whether the plaintiff's complaint had sufficient merit to withstand a motion to dismiss for lack of jurisdiction or failure to state a claim on which relief may be granted. See Fed. R. Civ. P. 12(b). The standards for dismissal on those grounds are familiar, are relatively easy to apply, and ensure that the plaintiff's claims are within the jurisdiction of the court and grounded in law.[16]

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[14] See, *e.g.*, *Zinn* v. *Shalala*, 35 F.3d at 274 ("the plaintiffs' claims, if pressed, cannot have been frivolous, unreasonable, or groundless" (quoting *Stewart* v. *McGinnis*, 5 F.3d 1031, 1039 (7th Cir. 1993), cert. denied, 510 U.S. 1121 (1994)); *Little Rock Sch. Dist.* v. *Pulaski County Special Sch. Dist. 1*, 17 F.3d at 262 (same); *Pembroke* v. *Wood County*, 981 F.2d. 225, 230-231 (5th Cir.) (same), cert. denied, 508 U.S. 973 (1993); *Nadeau* v. *Helgemoe*, 581 F.2d at 279 (same); see also *Hennigan* v. *Ouachita Parish Sch. Bd.*, 749 F.2d at 1153 (the plaintiff's lawsuit "lacked colorable merit").

[15] That approach would effectively require the parties to litigate the mooted claims. See *Hensley*, 461 U.S. at 437 ("A request for attorney's fees should not result in a second major litigation.").

[16] See, *e.g.*, *Hishon* v. *King & Spalding*, 467 U.S. 69, 73 (1984) (a motion to dismiss may be granted "only if it is clear that no relief could be

Second, the plaintiff must be able to demonstrate that it obtained redress of a grievance that motivated the suit. See *Hewitt*, 482 U.S. at 760-761 (the defendant's actions must "afford[] the plaintiff all or some of the relief he sought through a judgment—*e.g.*, a monetary settlement or a change in conduct that redresses the plaintiff's grievances"). The Court suggested in *Hewitt* that the plaintiff needs to show that the complaint encompassed the relief that the defendant provided and that the plaintiff personally benefitted from the defendant's actions. See *id.* at 763; see also *Rhodes*, 488 U.S. at 4. At a minimum, the plaintiff must have received "some of the benefit sought in the lawsuit, even though the plaintiff does not ultimately succeed in securing a favorable judgment." *Baumgartner* v. *Harrisburg Hous. Auth.*, 21 F.3d 541, 546 (3d Cir. 1994) (quoting *Wheeler* v. *Towanda Area Sch. Dist.*, 950 F.2d 128, 131 (3d Cir. 1991)).

Third, the plaintiff must demonstrate "a clear causal link" between the plaintiff's suit and the defendant's actions. *Hewitt*, 482 U.S. at 763. See, *e.g.*, *Baumgartner*, 21 F.3d at 546 (the plaintiff must show "a causal connection between the litigation and the relief from the defendant" (quoting *Wheeler*, 950 F.2d at 131)); *Foremaster* v. *City of St. George*, 882 F.2d 1485, 1488 (10th Cir. 1989) (same), cert. denied, 495 U.S. 910 (1990). In a situation in which the defendant has undertaken voluntary action, the court's analysis of the defendant's motivations will likely depend on a highly factbound inquiry and may turn on reasonable inferences from the nature and timing of the defendant's change in conduct. At bottom, the plaintiff must be able to show that the lawsuit, as a matter of fact, played a substantial role in

granted under any set of facts that could be proved consistent with the allegations"). See also Note, *Civil Rights Attorney's Fees Awards in Moot Cases*, 49 U. Chi. L. Rev. 819, 837-838 (1982).

inducing the defendant to change its ways. See *Marbley* v. *Bane*, 57 F.3d 224, 234 (2d Cir. 1995).[17]

[17] Where the defendant is a governmental entity and the plaintiff asserts that its lawsuit prompted a governmental change in policy, the plaintiff may confront particular problems of proof because the government acts through collective consensus and may elect to change laws and regulations for policy reasons unrelated to pending litigation. The legislative and regulatory history of laws and regulations often provides guidance in determining the basis for statutory and regulatory amendments. Compare *Paris* v. *United States Dep't of Hous. & Urban Dev.*, 988 F.2d 236, 241 (1st Cir. 1993) (Where legislative history makes clear that the plaintiff's individual suit prompted a statutory amendment, the lawsuit may be "fairly characterized as a catalyst of Congress' amendment."), with *Milton* v. *Shalala*, 17 F.3d 812, 815 (5th Cir. 1994) ("The mere possibility that Congress acted because of an individual claimant's suit (or reacted to a large number of similar suits) is too speculative in our view considering the many influences upon members of Congress in casting their votes."), and *Truax* v. *Bowen*, 842 F.2d 995, 997 (8th Cir. 1988) (Where enactment of reform legislation was partly the result of thousands of lawsuits, "the causal link between [the [plaintiff's] lawsuit and Congress's action is too tenuous to satisfy the calalyst test."); see also *Hendricks* v. *Bowen*, 847 F.2d 1255, 1259 (7th Cir. 1988) (Easterbrook, J. concurring) (A plaintiff is not entitled to attorney's fees if it is merely the "fortuitous beneficiary" of new legal standards.).

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

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